

November 19, 1998

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL.

SUBJECT: Department of Development and Environmental Services File Nos. **L94P0020 & L97VA018**
Proposed Ordinance No. **98-580**

MEADOW GLEN
Proposed Plat Application
and
Application for Variance from the
King County Sensitive Areas Code

Location: Lying approximately between Military Road South and 39th Avenue South
(if extended), and between South 378th Street and South 383rd Street (if extended)

Applicant: Fred Leenstra, 38016 Military Road South, Auburn, WA 98001

SUMMARY OF RECOMMENDATIONS AND DECISION:

Department's Preliminary:	Approve Preliminary Plat, subject to conditions Approve Variance, in part, and Deny, in part
Department's Final:	Approve Preliminary Plat, subject to conditions (modified) Approve Variance, in part, and Deny, in part
Examiner:	Approve Application for Preliminary Plat Approval, subject to conditions (modified) Approve Variance, in part, and Deny, in part

PRELIMINARY MATTERS:

Application submitted:	December 27, 1994
Complete application:	December 27, 1994

EXAMINER PROCEEDINGS:

Hearing Opened:	October 8, 1998
Continued for Administrative Purposes	October 8, 1998
Hearing Closed (Applicant's Reply Brief Received:	October 30, 1998

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Access (vehicular)
- Impact fees
- Infiltration
- Road adequacy
- Road improvements
- Schools
- Surface water detention
- Variances
- Vesting
- Wetlands

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner:	Fred Leenstra, 38016 Military Road South, Auburn, WA 98001
Developer:	N. W. Sunrise Development, 2708 SW 305 th Street Federal Way, WA 98023
Engineer:	Baima & Holmberg, Inc., 100 Front St. S, Issaquah, WA 98023
Location:	Lying approx. between Military Rd S and 39 th Ave S (if extended), and between S 378 th St. and S 383 rd St. (if extended)
STR:	34-21-04
Zoning:	SR9600
Acreage:	33.59 acres
Number of Lots:	118 lots

Typical Lot Size: Ranges from approx. 5,000 sq. ft. to 9,500 sq. ft.
 Proposed Use: Detached single family residences
 Sewage Disposal: Federal Way Water and Sewer District
 Water Supply: Federal Way Water and Sewer District
 Fire District: King County Fire District #39
 School District: Fife School District
 Complete Application Date: December 24, 1994

2. The principle issues with respect to this proposed development are its impacts on traffic circulation and the road east of the plat (south 380th Street); use of on-site wetlands for surface water detention facilities; suitability of soil conditions for infiltration of surface water from the eastern portion of the plat; and responsibility of the applicant for payment of school impact mitigation fees.
3. Except as modified below, the facts set forth in the King County Land Use Services Division's Preliminary Report to the King County Hearing Examiner for the October 8, 1998 public hearing are found to be correct and are incorporated herein by this reference. Copies of the said report will be attached to the copies of this report submitted to the County Council.
4. The applicant's current proposal is reflected in the preliminary plat map revised on September 9, 1998 and received by King County Land Use Services on September 16, 1998.

South 380th Street

5. The principal access to the site is proposed to be provided by constructing a neighborhood collector road (South 380th Street) to intersect with Military Road South on the west property boundary. Additional access will be available from 37th and 38th Avenues South to the north, and South 380th Street to the east.

South 380th Street is presently paved from 37th Avenue South to 38th Avenue South. From 38th Avenue South to 42nd Avenue South, a distance of approximately 800 feet, it is an unmaintained gravel roadway within a 30-foot-wide right-of-way. The applicant proposes to construct a new section of South 380th Street from Military Road to 37th Avenue South, and to improve the existing paved section along the plat frontage, from 37th Avenue South to approximately 38th Avenue South. This new and improved roadway will provide an urban neighborhood collector street, within a 54 foot wide right-of-way, from Military Road to 38th Avenue South. However, east of 38th Avenue South, the applicant proposes to leave South 380th Street in its present unmaintained condition. It is the applicant's position that the proposed subdivision does not need access via South 380th Street to 42nd Avenue South.

If no improvements are made to the existing gravel roadway, the proposed development will impact that section of South 380th Street by increasing the number of average weekday vehicle trips from the current count of 80 to an estimated 210. (If full improvement of South 380th Street were accomplished, there would be a further increase to a total of 335 average daily trips on South 380th Street.). An increase from 80 to 210 daily trips on the existing unmaintained gravel road would create an unsafe condition for vehicles and pedestrians using the roadway. This impact is attributable directly to the proposed development of Meadow Glen.

As an alternative to providing any improvement to the 800 foot gravel section, the applicant and some area residents suggest blockading South 380th Street at various alternative locations east of 38th Avenue South. No cited ordinance or policy supports blocking South 380th Street.

The King County Departments of Transportation and Development and Environmental Services recommend that the applicant be required to provide a partial improvement to the gravel section of South 380th Street. They recommend that the 800 foot section be improved to the half-street standard within the existing 30 foot right-of-way. This would provide 20 feet of paved roadway, shoulder or sidewalk, and controlled drainage.

The half-street improvement recommended by the King County Department of Transportation and DDES is the minimum improvement necessary to safely accommodate the projected traffic volume increase which will occur with the development of the plat of Meadow Glen. This limited improvement will minimize diversion of additional traffic from other east-west routes in the area. (Exhibit no. 21, page 2.)

Wetlands

6. There are three mapped wetlands on the Meadow Glen site. In addition, the required buffer for a wetland lying south of the subject property may extend onto the site. Wetland 1 is a small, isolated, excavated pond north of the existing house in the southwest corner of the property. Although not within previously hydric soils, it is a Class 3 wetland as defined by KCC Chapter 21.54.

Wetlands 2 and 3, the larger of the on-site wetlands, include four constructed ponds within hydric soils in a swale running from north to south across the property. Wetlands 2 and 3 are Class “2” wetlands.

Class 2 wetlands require a fifty-foot buffer; class one wetlands require a 25 foot buffer. The Sensitive Areas Code requires that these wetlands and their buffers be preserved in sensitive area tracts.

7. This application for preliminary plat approval was accepted by King County as a complete application on December 27, 1994. The applicant elected to have the proposal reviewed pursuant to the King County Zoning Code and other land use regulations in effect on that date. On August 5, 1997, the applicant submitted a request for a variance from Chapter 21.54 of the zoning code, to permit construction of South 380th Street through the southern portion of the Tract “C” wetland and buffer, and to allow for the use of the three on-site wetlands as surface water detention and control facilities.

RCW 58.17.033 states: “(1) A proposed division of land ... shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval ... has been submitted ...” Noble Manor v. Pierce County, 133Wn.2d.269(1997), requires that development applications which are in furtherance of the project disclosed by the plat application

be reviewed under the code and other regulatory provisions in effect on the date the application for preliminary plat approval was vested.

On December 27, 1994, King County Code Chapter 21.54 governed sensitive areas. Wetlands were defined by and subject to the requirements of KCC 21.04.920 and KCC 21.54.260 - .290. There was no exception (as there now is) for constructed wetlands. KCC 20.54.260 prohibited alteration of wetlands and their required buffers except as expressly authorized by Chapter 21.54. The express authorizations of that chapter were limited to public agency and utility exceptions and reasonable use exceptions. Neither of those exceptions are applicable to this proposal. Therefore, the only avenue open to this applicant to avoid the specific prohibition of wetland and buffer alteration contained in KCC 20.54.260 is to seek a variance from the sensitive areas chapter, as was then authorized by King County Code Chapter 21.58.

8. The process for acting on a variance requested pursuant to Chapter 21.58 called for a decision by the manager of DDES or his designee, or by the King County Zoning Adjustor, appealable to the Hearing Examiner. However, Ordinance 12196, which became effective on April 1, 1996, applies to complete applications filed on or after that date. Among the purposes of Ordinance 12196 is the establishment of standard procedures for land use permit applications, hearings and appeals in King County, to eliminate redundancy, minimize delay and expense, and implement policies of the Comprehensive Plan. The new procedures are also intended to provide for an integrated and consolidated land use permit and environmental review process.

Because this application for variance was filed after April 1, 1996, the responsibility for acting on this variance application is transferred to the hearing examiner, as part of the review process of the application for preliminary plat approval. KCC 20.20.020.B. However, under the rule of Noble Manor, the hearing examiner's action must be based upon the substantive provisions of the King County Code in effect on the date that the application for preliminary plat approval became vested.

9. The 1994 King County Comprehensive Plan was enacted November 28, 1994, with the provision that it would take effect "upon adoption of the 1995 CIP (Capital Improvement Program) or December 30, 1994, whichever occurs first". Ordinance 11575, Section 6. The 1995 CIP was adopted by the King County Council on November 21, 1994. The policies of the 1994 Comprehensive Plan, which are to be used to guide land development decisions, are applicable to the present applications. KCC 20.12.010. (See DDES Preliminary Report Section L.)
10. Construction of South 380th Street (road A) in the currently proposed location is requested by the applicant in order to serve the eastern portion of the proposed development with a direct connection to Military Road. To provide this direct connection to the principal arterial, it is necessary for South 380th Street to cross the Class 2 wetland and wetland buffer contained within Tract C.

Although development of the eastern portion of the site could occur without providing direct access to Military Road, to do so would have several adverse consequences. Residents on that portion of the property would be denied the most convenient and direct route to the arterial, forcing travel to the north, then south, in a circuitous pattern to reach neighborhood shopping and the nearby north-south arterial (SR 161). Additional traffic to and from Meadow Glen would use

the half street section of South 380th Street, to and from 42nd Avenue South, as a preferred route to SR 161. Residents of the neighborhoods to the north and east of Meadow Glen also would be denied the opportunity to have more direct access to Military Road and to SR 161. A full neighborhood traffic circulation system for the area would be foreclosed for the foreseeable future. These effects constitute a special circumstance of the location and surroundings of the subject property, which would cause the strict application of the zoning code to deprive this property of rights and privileges enjoyed by other properties in the vicinity under identical zone classification.

The granting of a variance to allow the crossing of wetland and wetland buffer will not be materially detrimental to the public welfare, injurious to other property or improvements in the vicinity and zone in which the subject property is situated, or contrary to the goals and purposes of the sensitive areas code as set out in KCC Chapter 21.54, provided that mitigation of the wetland and buffer loss and disturbance is provided so that there will be no net loss of wetland functions or values on the site. The wetland and buffer disturbance proposed for the construction of South 380th Street is the minimum necessary to accommodate this use, and mitigation can be provided which would assure no net loss of wetland functions or values.

11. The examiner cannot find in the record of this proceeding any special circumstance applicable to the subject property which would justify a variance to allow use of any of the on-site wetlands or their buffers for surface water detention and control. Any property in the SR 9600 zone classification would be subject to the restriction upon elimination of wetlands. The fact that the current zoning code (which the applicant has chosen not to utilize) would allow for elimination of this Class 3 wetland is not a special circumstance applicable to this property. The applicant's proposal to develop the subject site pursuant to the SR 9600 zone classification enables the applicant to design and construct a development pursuant to regulations which are different than those currently in effect. The applicant could avoid any regulation of Wetland No. 1 by electing to develop the subject property under the current zoning. But to allow the applicant to pick among the provisions of the Title 21 and Title 21A zoning codes in developing the property would be the grant of a special privilege not normally allowed.

The applicant presented evidence that use of the wetland areas for surface water control and detention could result in enhancement of the wetland areas and buffers, and provision of an improved open area for the benefit of the plat's residents. These wetland enhancements and buffer improvements also can be provided, if the applicant elects to do so, as part of the mitigation for the approved road crossing of the wetland and buffer.

The subject property can be developed pursuant to the SR 9600 zone classification, utilizing surface water detention facilities located within areas of the plat which are not sensitive areas. Although a reduction in the number of developed lots will occur, or additional cost may be incurred, this does not deny the applicant the reasonable use of his property, and leaves him in the same position as all other landowners in King County who have developed land in the SR 9600 zone classification during the effective period of KCC 21.54.

Surface Water Infiltration

12. The preponderance of the evidence indicates that the southeastern portion of the subject property can probably be developed with infiltration of surface water runoff, as proposed by the applicant. However, final definitive studies of a proposed infiltration system are necessary before a final determination of suitability of the area for infiltration can be made. Those studies can be required as part of the process of design and approval of engineering plans. If DDES does not approve infiltration, the portion of the site for which infiltration is proposed can be established as a non-building tract, or could be redesigned consistent with the conditions for final plat approval contained in this report and recommendation.

School Impact Fee

13. King County Ordinance No. 10162 was enacted December 2, 1991, to address impacts of new development on schools. The ordinance describes a process for review of the availability of school facilities to serve proposed new development. It also provided for facilities plans and fee schedules to be developed by school districts, presented to King County for review, and adopted by the King County Council. When adopted, those fee schedules are to be applied by the county to all residential development which is subject to the county's concurrency standard.

Section 12 of Ordinance 10162 defines "district" as, "a school district for which the county has adopted an impact fee ordinance and fee schedule, and has incorporated the capital facilities plan of the district into the capital facilities element of the King County Comprehensive Plan". Section 13 provides, "Impact fees will be assessed on every new dwelling unit in the district for which a fee schedule has been established".

For a plat applied for on or after the effective of the ordinance adopting the fee for the district in question,

"50% (of the adopted fee)... shall be assessed and collected from the applicant at the time of final approval, using the impact fee schedule in effect when the plat or PUD was approved." Ordinance 10162, Section 16.B.

The provision specifically applicable to the plat of Meadow Glen is,

"...(If on the effective date of a district's ordinance, an applicant has applied for preliminary plat or PUD approval, but has not yet received such approval, the applicant shall follow the procedures set forth in subsection B above.)" Ordinance 10162, Section 16.C.

Ordinance 10162 provided a process and standards for review of the adequacy of school facilities to serve a proposed development, and served to alert the applicant that school impact fees may be required to be paid as a condition of final plat approval. The review of this proposal by DDES determined that school facilities are adequate to serve this development. The amount of a school impact fee, if any, which might be charged, was undeterminable at the time of submission of this application. Had the application been acted upon (granted preliminary approval) prior to the effective date of the Council's adoption of the capital facilities plan and a fee schedule for the

Fife School District (January 1, 1997), there would have been no fee required at the time of final plat approval.

The effect of subsections B and C, insofar as pertinent to this issue, is that an applicant for subdivision approval is treated no differently if the application was made before or after adoption of a county ordinance approving a school district facilities plan and establishing a fee schedule for development within the district. In either case, the applicant is required to pay one-half of the adopted fee at the time of final plat approval. The balance is collected when building permits are issued.

RCW 58.17.033, which expanded Washington's common law doctrine of vested rights to subdivisions, establishes the date of vesting as the date of submission of a complete application. The date of action on the application is immaterial to the issue of vesting in Washington. The statute cited does not allow for subjecting an applicant for preliminary plat approval to a fee that was not adopted at the time of application.

Lot Dimensions

14. The preliminary plat proposed by the applicant does not meet the requirements of the SR 9600 zone classification with respect to the minimum dimensions of a significant number of lots (see DDES preliminary report, Section H.1). Lot line changes to the affected lots can be accomplished as a minor revision, subject to administrative review and approval by the Department of Development and Environmental Services.

CONCLUSIONS:

1. Final approval of the proposed plat of Meadow Glen, as currently proposed by the applicant, is dependent upon approval by the King County Road Engineer of a variance from King County road standards, to allow construction of the intersection of South 380th Street and Military Road South within one thousand feet of existing or previously approved intersections. Final plat approval should be conditioned upon issuance of such a variance.
2. The proposed development will cause substantial additional travel on South 380th Street east of the subject property. This additional traffic is the direct result of, and attributable solely to, development of the plat of Meadow Glen. The additional traffic will create an unsafe condition for vehicles and pedestrians on the 800 foot length of unmaintained gravel right-of-way.

The construction of South 380th Street to King County standards as a half street is the minimum improvement authorized by the King County Road Standards which would provide a reasonably safe roadway for use by the additional traffic (including pedestrians). The construction of a half street, consistent with King County road standards, is directly proportional to the impact which will result from the applicant's proposal.

No provision of the King County Comprehensive Plan, King County Zoning Code, or the adopted King County Road Standards has been cited to the hearing examiner which would justify blockading South 380th Street as a route of travel between the subject property and 42nd Avenue

South. The recommendation by the Department of Development and Environmental Services and the Department of Transportation that South 380th Street be improved to county half-street standards provides for an improvement consistent with King County Road Standards, and is the minimum necessary to meet requirements for public safety. This recommended improvement is necessary as a direct result of development of the subject property to provide for the public health safety and welfare.

3. A variance from the King County sensitive areas code to allow for a road crossing of the wetland and wetland buffer within tract C is justified by the special circumstances described in Finding No. 10. The variance to allow this road crossing to occur should be granted.
4. A variance from the provisions of the sensitive areas code (Chapter 20.54) to permit utilization of any wetland areas on this site for the construction of plat surface water control facilities has not been justified by the applicant's evidence. No special circumstances exist which justify this request for a variance. A variance for this purpose would constitute a grant of special privilege to this applicant. The subject property can be developed for the proposed use, consistent with the provisions of the SR 9600 zone classification, without issuance of this variance.
5. Approval of building lots within the eastern portion of this development, as proposed by the applicant, is dependent upon disposal of surface water runoff by infiltration. Final approval of the proposed subdivision should be conditioned upon DDES's approval of additional geotechnical studies demonstrating suitable soils and conditions for infiltration, including emergency overflow and the protection of downstream properties. If the viability of infiltration is not demonstrated to the reasonable satisfaction of DDES, the lots which would be served by the infiltration system should be deleted.
6. RCW 58.17.033 and the decision of the Washington State Supreme Court in Noble Manor v. Pierce County, decided October 2, 1997, create substantial doubt as to King County's authority to condition final plat approval on payment of a school impact fee which had not been adopted on the date this application became vested. The current law of Washington is that upon submission of a complete application for a subdivision or short subdivision, the applicant has the right to have that application, including both the request to subdivide and the request to develop the land, considered under the zoning and land use laws in effect on the date of the application. There is no authority to support the position that an ordinance which serves only to alert a developer that fees may be adopted in the future, but which are not then adopted, authorizes the county to establish, and then collect, such fees as a result of legislative actions taken after the date on which the application became vested.

Ordinance 10162, in effect on the date of vesting of this application, did authorize King County to make a determination as to whether adequate school district facilities existed, or would exist, to serve the proposed development. DDES determined (Preliminary Report Section J.1.B), and the examiner found (Finding No. 3), that the Fife School District has adequate capacity to accommodate students generated by this proposal.

7. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, Federal Way Community

Plan, subdivision and zoning codes, and other official land use controls and policies of King County.

8. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces, for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary wastes, parks and recreations, playgrounds, schools and school grounds, and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
9. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of this development upon the environment.
10. The dedications of land or easements within and adjacent to the proposed plat, as recommended by the conditions for final plat approval or as shown on the proposed preliminary plat submitted by the applicant, are reasonable and necessary as a direct result of the development of this proposed plat.

RECOMMENDATIONS:

Variances:

Based upon the foregoing findings and conclusions, it is recommended that the application for variances from the King County zoning code be approved in part and denied in part, as follows:

Allow the crossing of a portion of the Tract C wetland and wetland buffer by South 380th Street, subject to mitigation;

Deny the request to utilize any on-site wetlands or their buffers for plat surface water detention and control facilities.

(Note: Action denying the applications for variance from the Sensitive Areas Code does not preclude consideration by DDES of buffer averaging, consistent with code requirements.)

Plat:

It is recommended that the application for preliminary approval of the proposed plat of Meadow Glen, as revised and received September 16, 1998, be granted, subject to the following conditions for final plat approval:

1. Road Variance application L98V0111 shall be approved by the King County Traffic Engineer to allow construction of the intersection of South 380th Street with Military Road South, substantially as proposed.
2. Compliance with all platting provisions of Title 19 of the King County Code.
3. All persons having an ownership interest in the subject property shall sign on the face of the final

plat a dedication which includes the language set forth in King County Council Motion No. 5952.

4. The plat shall be redesigned to provide storm water detention and control facilities (including water quality facilities) outside of wetlands and wetland buffers. The redesigned plat shall comply with the lot area requirements of the SR 9600 zone classification. All lots shall also meet the minimum dimensional requirements of the SR 9600 zone classification and shall be generally as shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services. Documentation shall be submitted to show that the lot width requirements of the SR 9600 zone have been met (KCC 21.20.070).
5. The applicant must obtain final approval from the King County Health Department.
6. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards, established and adopted by Ordinance No. 11187, subject to any variances approved by the King County Road Engineer.
7. The applicant must obtain the approval of the King County Fire Protection Engineer, regarding the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
8. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final plat review.
 - a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."

d. Core Requirement No. 3 – Runoff Control

e. Special Requirement No. 5 – Special Water Quality Controls

During review of the final drainage plans, the applicant shall demonstrate compliance with the thresholds and design requirements for water quality facilities.

f. Special Requirement No. 9 – 100-year Floodplain

Several wetlands are located on the property; therefore, a floodplain analysis shall be performed. The 100-year floodplain boundaries shall be shown on the final engineering plans and recorded plat.

9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council, prior to final plat recording.
10. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
11. Building permits for lots within this subdivision will be subject to 100% of impact fees in effect at the time of permit application to fund school system improvements needed to serve new development. This shall be noted on the final plat.
12. There shall be no direct vehicular access to or from those lots in the subject plat which abut Military Rd., Road A, and S. 380th St. A note to this effect shall appear on the final plat and engineering plans.
13. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
 - a. During preliminary review, the applicant submitted a road variance application (File No. L98V0111) regarding intersection spacing on Military Road. The final road improvements shall comply with any required conditions of approval of the road variance.
 - b. Military Road shall be improved along the frontage of the property as an urban principal arterial. This improvement shall include the provision for a bicycle lane along the east side of the roadway, and a northbound right turn lane at Road A. Twenty feet of additional right-of-way shall be dedicated to King County, to provide 50 feet of right-of-way from centerline.

- c. Road A/S. 380th St. shall be improved as an urban neighborhood collector street from Military Rd. to 38th Ave. S., and as an urban half street between 38th Ave. S. and 42nd Ave. S.
 - d. 37th Avenue South shall be improved along the frontage of the property as an urban subcollector.
 - e. Roads B, C, D, E, and I shall be improved as urban subaccess streets. A temporary turnaround shall be provided at the terminus of Road D, and the northern terminus of Road B. All other cul-de-sac streets, which serve less than 16 lots, shall be improved as urban minor access streets.
 - f. Tract G shall be improved as a private, joint-use driveway serving Lots 7 and 8. These lots shall have undivided ownership of the tract and be responsible for its maintenance. As specified in KCRS 3.01C, improvements shall include an 18-foot-wide paved surface and a minimum tract width of 20 feet. Drainage control shall include a curb or thickened edge on one side.
 - g. Tracts H, K and L shall be designed as a private access tracts. The lots being served by each of the tracts shall have undivided ownership of the relevant tract, and be responsible for its maintenance. Improvements shall conform to KCRS 2.03 for urban minor access roads, which include 22 feet of paving. The minimum tract width shall be 26 feet, with a maximum length of 150 feet.
 - h. Street trees shall be included in the design of all road improvements, per KCRS 5.03.
 - i. Since Military Rd. is designated an arterial, street illumination shall be provided at the Road A/Military Rd. intersection, in accordance with KCRS 5.03.
 - j. Bus zones and turn outs may also be required along the subject property's frontage on Military Road, because this road is an arterial. As specified in KCRS 2.16, the designer preparing the engineering plans for the subject plat shall contact Metro and the local school district to determine specific requirements.
 - k. Modifications to the above road conditions may be considered by King County, pursuant to the variance procedures in KCRS 1.08.
14. The planter islands (if any) within the turnaround bulbs shall be maintained by the abutting lot owners or the homeowners' association. This shall be stated on the face of the final plat.
15. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS SETBACK AREAS**

Dedication of a sensitive area tract/sensitive area setback area conveys to the public a beneficial interest in the land within the tract/sensitive area setback area.

This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat.

The sensitive area tract/sensitive area setback area imposes upon all present and future owners and occupiers of the land subject to the tract/setback area the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/setback area. The vegetation within the tract/setback area may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/setback area and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area setback area. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

16. The proposed subdivision shall comply with the sensitive area requirements as outlined in KCC 21.54, except as modified by Condition 17e below. Permanent survey marking, and signs as specified in KCC 21.54.120 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
17. Preliminary plat review has identified the following sensitive area requirements, which apply to this project.
 - a. The wetlands within Tracts A and C are Class 2 wetlands. A 50 foot buffer shall be provided around these wetlands.

The wetland within Tract B is a Class 3 wetland. A 25 foot buffer shall be provided around this wetland.
 - b. A wetland study shall be provided prior to or concurrently with the engineering plan submittal, which evaluates the off-site wetland lying south of Tract D. This study shall be prepared by a qualified biologist. LUSD shall determine the appropriate classification for this wetland, and a wetland buffer shall be provided within the subject plat, consistent with KCC 21.54.270, to the extent such buffer falls within the subject property.
 - c. Buffer averaging is permitted within the subject plat, subject to the provisions of KCC 21.54.270A3 and the approval of LUSD.

- d. The above-noted wetlands and their buffers shall be placed in sensitive area tracts on the final plat and engineering plans.
 - e. The southern end of the wetland and associated buffer in Tract C may be modified, as necessary, to construct Road A. Encroachment into the wetland and buffer shall be minimized to the extent that is practical, as determined by LUSD. The road crossing shall be constructed, and mitigation provided, consistent with the provisions of KCC 21A.24.330N. LUSD may require a hydrologic study to establish an appropriate invert elevation for the re-constructed outfall for the wetland.
18. A fee-in-lieu of on-site recreation space shall be paid by the applicant to King County. The amount of the fee shall be determined by the King County Parks Division, consistent with the provisions of KCC 19.38.080.
19. A homeowners' association or other workable organization shall be established to the satisfaction of LUSD which provides for the ownership and continued maintenance of the open space areas.
20. Street trees shall be provided along the subject property's frontage on Military Rd. and Road A/S. 380th St., as follows:
- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation (KCDOT) determines that trees should not be located in the street right-of-way.
 - c. If KCDOT determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners or the homeowners' association or other workable organization, unless the County has adopted a maintenance program. This shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by LUSD and KCDOT if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by LUSD prior to engineering plan approval. KCDOT shall also review the street tree plan if the street trees will be located within the right-of-way.
 - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if Military Rd. is on a bus route. If Military Rd. is a bus route, the street tree plan shall also be reviewed by Metro.

- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after LUSD has completed a second inspection and determined that the trees have been kept healthy and thriving.

A \$538 landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

- 21. This condition has been established under SEPA authority as necessary to mitigate the adverse environmental impacts of this development. The applicant shall demonstrate compliance with these items prior to final approval.

Due to downstream drainage problems, storm water runoff control shall be provided in this subdivision which conforms with the design standards contained in the Hylebos Creek Basin Plan. Specifically, BW-3 from the Basin Plan shall be met, which requires a post development storm water release rate for storms up through the 100-year event at 70 percent of the pre-development 2-year rate.

Analysis shall be based on the SBUH method, using 24-hour events, as described in the King County Surface Water Design Manual (1995 update). As an alternative to the BW-3 standard, King County LUSD may allow a reduced standard for the stormwater release rate, if deemed appropriate based on continued analysis of the basin area.

- 22. This development proposal is vested under KCC 21.49, Road Adequacy Standards and will have a direct impact on the intersection of SR 161/Military Road, as defined under these standards. To mitigate this impact, one of the following shall occur:
 - A. The developer shall pay a pro rata share toward the Washington State Department of Transportation (WSDOT) SR 161 widening project. The pro rata share calculation shall be limited to the costs associated with improvements to the intersection of SR 161/Military Road that will improve the intersection to LOS "E". The pro rata share amount shall be approved by King County Department of Transportation in consultation with WSDOT; or
 - B. The developer shall provide improvements to the intersection of SR 161/Military Road that will improve the level of service to "E" or better. Intersection improvement plans shall be approved by WSDOT prior to engineering plan approval; or
 - C. Final plat approval shall be deferred until WSDOT has awarded a contract for the SR 161 road improvement project which is projected to provide LOS "E" or better.

RECOMMENDED this 19th day of November, 1998.

James N. O'Connor
King County Hearing Examiner

TRANSMITTED this 19th day of November, 1998, to the parties and interested persons on the attached list.

**NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED**

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before December 3, 1998**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before December 10, 1998**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the date on which the Council passes an ordinance acting on this matter.

MINUTES OF THE PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L94P0020 – MEADOW GLEN:

James N. O'Connor was the Hearing Examiner in this proceeding. Participating at the hearing were Lanny Henoch, Peter Dye, Aileen McManus, Jon Hansen, and Nick Gillen representing the County; Shupe Holmberg, Charles Klinge, Fred Leenstra, Todd Waetzig, Kevin Kaul, Todd Brown, Edward Koltonowski, Brad Murphy, and Scott Traverso.

The following exhibits were offered and entered into the hearing record.

- Exhibit No. 1 LUSD File No. L94P0020
- Exhibit No. 2 LUSD File No. L97VA018
- Exhibit No. 3 LUSD staff report, prepared for the October 8, 1998, public hearing
- Exhibit No. 4 SEPA environmental checklist received December 27, 1994
- Exhibit No. 5 SEPA Mitigated Determination of Nonsignificance issued October 8, 1996
- Exhibit No. 6 Subdivision application signed December 27, 1994
- Exhibit No. 7 Zoning variance application signed January 30, 1997
- Exhibit No. 8 Affidavit of Posting for the notice of public hearing, indicating the property was posted with the hearing notice on September 8, 1998
- Exhibit No. 9 Applicant's revised plat map received September 16, 1998
- Exhibit No. 10 Applicant's conceptual drainage plan received September 16, 1998
- Exhibit No. 11 Drawing entitled "Proposed S. 380th St. Improvements," received May 22, 1998, and prepared by Baima & Holmberg, Inc.
- Exhibit No. 12 Land use map – Kroll maps 753 E & W
- Exhibit No. 13 King County Assessor map for the SW ¼ of 34-21-4
- Exhibit No. 14 Traffic study prepared by Gibson Traffic Consultants, dated December 6, 1995
- Exhibit No. 15 "Subsurface Exploration and Infiltration Analysis...", dated January 15, 1996, and prepared by Scott Traverso, PE
- Exhibit No. 16 "Geotechnical Evaluation," dated July 1, 1996, and prepared by Geospectrum Consultants, Inc.
- Exhibit No. 17 "Wetland Evaluation," dated August 25, 1995, and prepared by Terra Associates, Inc.
- Exhibit No. 18 "Buffer Averaging and Enhancement for Meadow Glen Plat," dated May 19, 1998, and prepared by Moss Environmental
- Exhibit No. 19 Road Variance Application L98VA011 received September 18, 1998
- Exhibit No. 20 Letter dated March 6, 1998, from Edward L. O'Neal
- Exhibit No. 21 Letter dated February 13, 1998, from Terry Gibson (Gibson Traffic Consultants) to Paulette Norman (King County DOT)
- Exhibit No. 22 Testimony of Fred Leenstra (affidavit)
- Exhibit No. 23 Photographs of ponds on property
- Exhibit No. 24 Written testimony of Shupe Holmberg
- Exhibit No. 25 Tracts "A" and "C" Conceptual Pond Plans
- Exhibit No. 26 A. Level I Drainage Analysis
B. Level II Drainage Analysis
- Exhibit No. 27 Expert report by Gibson Traffic Engineers (Edward Koltonowski)
- Exhibit No. 28 Screening letter dated January 21, 1998, from Lanny Henocho to Shupe Holmberg
- Exhibit No. 29 Resume of Brad Murphy
- Exhibit No. 30 Wetland and buffer enhancement report
- Exhibit No. 31 Expert report for hearing by Brad Murphy with attachments
- Exhibit No. 32 Wetland map
- Exhibit No. 33 Letter dated January 30, 1997, from Coowe Moss Kidd to Scott Traverso re sensitive areas variance
- Exhibit No. 34 Ordinance 9614 (SAO of 1990) preamble and signature page
- Exhibit No. 35 New condition re SR 161/Military Road intersection submitted by staff
- Exhibit No. 36 Revised Condition No. 16 submitted by staff
- Exhibit No. 37 Ordinance No. 12532 passed November 25, 1996
- Exhibit No. 38 Ordinance No. 12928 passed November 24, 1997

JNOC:vam/cp

Attachment

L94\L94P0020 rpt